United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1114

To be argued by
EDWARD MALZ

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

GARY SINGLETON, WILLIAM M. KIRBY, and WILLIAM ELMORE,

Appellants.

Docket No. 75-1114

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P/S

BRIEF FOR APPELLANT
GARY SINGLETON

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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UNITED STATES COURT OF APPEALS
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BRIEF FOR APPELLANT
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ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

QUESTIONS PRESENTED FOR REVIEW

1. Whether defendant-appellant GARY SINGLETON'S conviction for possession of stolen mail (violation of Title 18 U.S.C. Section 1708 and 2) must be reversed and dismissed for the Government's failure to prove beyond a reasonable doubt either possession or aiding and abetting.

2. Whether the prosecutor attempted to misuse a stipulation with defense counsel to the effect that certain pieces of mail

were sent in the ordinary course of business and instead tried to use that stipulation to supply an essential element of the crime that the checks were stolen.

3. Whether the prosecutor failed to comply with the liberal Federal disclosure procedures provided by the Federal Rules of Criminal Procedure and whether Rule 12, 16 and 41 were violated, resulting in an unfair trial for defendant-appellant.

4. Whether the trial Judge's participation during trial, in the form of interrogating witnesses, addressing counsel, and other unfair judicial conduct reached a point at which it appeared clear to the jury that the Court believed the accused was guilty.

5. Whether unfair judicial conduct, requiring a "close scrutiny of each tile in the mosaic" of the trial, will compel the reviewing Court to determine that instances of improper behavior or bias, when considered individually or taken together as a whole, may have reached that point where the reviewing Court can make a safe judgment that defendant-appellant was deprived of a fair trial.

6. Whether the sentencing Court denied this appellant Youth Corrections Act Treatment under the misapprehension that Narcotic Addicts Rehabilitation Act Treatment disqualified defendant from Y.C.A. eligibility and treatment, and therefore deprived defendant-appellant of equal protection and due process of law.

7. Whether certain portions of the Charge by the trial Judge served to confuse the jury and constituted plain and reversible error, and rendered the verdict of the jury equivocal.

STATEMENT PURSUANT TO RULE 28(a) (3)

PRELIMINARY STATEMENT

Appellant GARY SINGLETON and two others were arrested on June 17, 1974 by Postal Inspectors and charged in a One-Count Indictment with violation of Title 18 U.S.C. Sections 1708 and 2. The original Indictment Number 74 CR 449, charging only appellant GARY SINGLETON, was received in counsel's office on or about November 21, 1974, and a few days earlier on November 19, 1974, a superseding Indictment Number 74 CR 712 charging all three defendants-appellants was received by certified mail, return receipt requested, at the office of counsel for defendant GARY SINGLETON.

The trial commenced on January 13, 1975 before Hon. John R. Bartels and a jury and on March 15, 1975 the jury returned a verdict of guilty against all the defendants on the One-Count superseding Indictment Number 74 CR 712.

On May 29, 1975 Judge Bartels sentenced defendant-appellant GARY SINGLETON under Title 2 of the Narcotic Addicts Rehabilitation Act of 1966, Title 18 U.S.C. Section 4253, for a period of four years and refused to grant defendant-appellant GARY SINGLETON

Youth Corrections Act Treatment for that reason. GARY SINGLETON, who was nineteen years of age at the time of his arrest, is now incarcerated in Milan, Michigan. A Notice of Appeal was filed on May 29, 1975 for him in Forma Pauperis, and trial counsel appointed under the Criminal Justice Act was continued by the Court of Appeals to serve as counsel on this appeal.

On the date of sentencing, the superseded Indictment Number 74 CR 449 was dismissed on motion of the Government before Judge Bartels on or about May 29, 1975, or in any event should have been dismissed at that time after motion duly made by defense counsel, and the record should so indicate.

STATEMENT OF FACTS

At approximately 12:40 p.m. on June 17, 1974 letter carrier George Attmore, assigned to the Rochdale Village Postal Station, advised Postal Inspectors by telephone that his mail jeep, Vehicle No. 302230, had been forcibly entered through the rear door while parked at the curb at 146th Street and 130th Avenue, South Ozone Park, New York.

Carrier Attmore testified that he was interviewed at the scene and that he had observed a Ford Falcon with a black vinyl top and green bottom containing three male Negro occupants, parked near his mail jeep. He testified that the license number of this vehicle was 336-QFZ, and went on to describe the individuals he had seen. He described the driver as a young black male, very big, in excess of 200 pounds, very dark

complexion. The second occupant in the car was described as a black male, 5'7" - 5'9" tall, weighing approximately 138 to 140 pounds, medium complexion, black hair, "with a large bushy Afro". The third individual was described as a black male, 5'10" - 5'11", between 175 to 180 pounds, wearing a cap. Mr. Attmore stated that this individual was leaning into the driver's side of the car and that he did not get a good look at his face, stating that this individual tried to keep his face turned away from him (T 45-46; T 110-114; T 128-131)*.

At approximately 1:20 p.m. on June 17, 1974 a radio unit being operated by Special Postal Investigator John Shovlin in an unmarked car, observed the aforementioned Ford vehicle parked at the curb of 120th Avenue and Sutphin Boulevard. He notified a second radio unit, which contained Postal Inspectors Allan J. O'Neill, J. C. Cole and Philip Renzulli. The latter testified that when they arrived there, the Ford Falcon was pulling away from the curb, driving north on Sutphin Boulevard. At the corner of 111th Avenue and Sutphin Boulevard, the Ford vehicle made a right turn onto 111th Avenue and stopped at the curb. At that point, Inspector O'Neill double-parked his radio unit slightly to the front of the Ford, nearly avoiding a collision with it. Inspectors Renzulli and Cole got out of their unmarked car and

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*Citations to "T" refer to the Transcript of the trial, preliminary hearing, and Judge's Charge.

approached the passenger side of the Falcon, directing the occupants to get out of their vehicle. Kirby and Elmore got out and were taken to the sidewalk where they were directed to face the building wall and searched. As the Inspectors were searching Elmore and Kirby, the driver of the Falcon drove off and as he departed, a rolled-up plaid jacket belonging to Elmore came out of the passenger door which Kirby had left open and landed on the sidewalk (T 285-298). Renzulli testified that after handcuffing Elmore and Kirby he retrieved Elmore's jacket and found rolled-up inside it an envelope containing four checks and Elmore's wallet containing his identification papers. Renzulli stated that he asked Elmore and Kirby whether the jacket belonged to either of them and both denied ownership (T 302-312). Inspector O'Neill drove off after the Falcon and took appellant Singleton into custody at 159th Street and 111th Avenue (T 343-344).

During questioning at the Jamaica Post Office, Elmore acknowledged to Inspector Renzulli that the jacket and the wallet were his, but denied knowing anything about the checks which were found in his jacket (T 314-315; T 320-321; T 535-537).

On June 17, 1974 appellant GARY SINGLETON appeared before United States Magistrate Max Schiffman in the Eastern District of New York, at which time he was remanded to the Federal House

of Detention for Men in lieu of $2500.00 Surety Bond. On June 19, 1974 all three defendants made motions for bail reduction before United States Magistrate Max Schiffman and the Magistrate reduced the bail on appellants Singleton and Kirby to $1000.00 Surety and continued Elmore on $1000.00 Surety Bond, and all three were remanded to the Federal House of Detention for Men until June 29, 1974, when they were able to make bail.

On June 25, 1974, at the office of the Assistant U. S. Attorney Francis Sheerin of the Eastern District of New York, mail carrier George Attmore viewed a display of photographs of male Negroes and he and Postal Inspector O'Neill appeared before the Grand Jury in the Eastern District of New York on the same date (T 141-142).

After waiting almost five months, copies of the Indictment and Superseding Indictment were received, but only a few days prior to November 22, 1974 when the defendants were required to plead before Judge Bartels. Counsel for GARY SINGLETON was forced to send a letter to the Judge advising him that he would be out of town and asking Mr. Kelly of the Legal Aid Society to enter a plea of not guilty on behalf of Singleton to both the Indictment and Superseding Indictment, having notified Mr. Sheerin who had no objections. The necessary informal arrangements were also to be made regarding suppression, discovery and inspection and any other disclosure necessary. (See Index to

Record on Appeal Items No. 2, 20 and 21).

In conformity with the informal discovery and disclosure procedures apparently favored by Judge Bartels, appellant's counsel forwarded a letter to Assistant U. S. Attorney Sheerin on November 29, 1974, requesting discovery and inspection and Bill of Particulars pursuant to Rule 16, and Suppression Hearings pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure. The response of the Assistant U. S. Attorney dated December 6, 1974, which is annexed hereto with a copy of the aforesaid informal motion, was in Judge Bartels' own words during the trial not "as frank as it could be" (T 397). In the meantime Mr. Sheerin was getting ready to leave the U. S. Attorney's Office and another assistant, Mr. Richard Appleby took over the case. In desperation, the day of trial, January 13, 1975 approaching, appellant's counsel prepared and filed a formal Omnibus Motion returnable before Judge Bartels on January 13, 1975 at 10:00 a.m. (See Index to Record on Appeal Items No. 4, 5 and 6 for motion papers).

On January 13, 1975 Judge Bartels summarily denied the motions to dismiss the Indictment for legal insufficiency and the Omnibus Motion for Discovery and Inspection and Bill of Particulars, and about thirty minutes later the trial commenced with a Wade Hearing, catching appellant's counsel rather unprepared for the trial and sick with the flu besides. Rather

amazingly, although Minutes were definitely taken during the argument on the motion that morning, and the docket entries clearly reflect the making and filing of such motions returnable January 13, 1975, these Minutes could not be found and appear to have been lost for this appeal.

Before the trial commenced on January 13, 1975, Assistant U. S. Attorney Richard Appleby approached counsel for GARY SINGLETON with a Stipulation, which had already been signed by co-counsel Mr. Blum and Mr. Kelly, and stated that the Stipulation was solely to show that certain pieces of mail had been sent to certain payees in the ordinary course of business. Mr. Appleby represented to counsel that the Stipulation was to be used for no other purpose and ostensibly was for the purpose of saving these addressees of certain checks a trip to Court. (See Index to Supplemental Record on Appeal Item No. 39).

During the actual trial, Judge Bartels injected himself in the proceedings to such an unusual degree at every opportunity as to raise a substantial issue as to the Trial Judge's fairness in conducting the trial, as will be demonstrated in appellant's Point III herein. Appellant Singleton will also attempt to demonstrate with specific instances of the trial Judge's interference, which went far beyond clarification and created confusion

starting from the Simmons Hearing and pervading the entire trial, coupled with bias against counsel for defendant Singleton, resulting in an unfair trial and depriving the appellant Singleton of the effective use of counsel to which he was entitled especially in front of the jury. In order to make a "close scrutiny of each tile in the mosaic", appellant urges the Court of Appeals to read the entire trial transcript and Sentence Minutes and other record of proceedings available, all of which would tend to make the reproduction of an appendix impractical. Appellant Singleton will therefore move pursuant to Rule 30(f) of the Federal Rules of Appellate Procedure for an Order dispensing with the requirement of an appendix, permitting his appeal to be heard on the original record.

At the trial Appellant Singleton did not choose to take the stand, relying upon the presumption of innocence and the failure of the Government to prove its case beyond a reasonable doubt. Elmore called one witness on his behalf, Agent O'Neill who had also testified for the Government, and by not taking the stand himself Elmore may have created a Bruton problem, which did not become apparent until the trial was well advanced, in view of the summary denial of defendant's suppression motion (T 319-321; 330). The only other defense witness was the co-defendant Kirby, who testified on his own behalf and denied participation in any

theft, stating that he had no knowlege of the checks rolled-up in Elmore's coat (T 412-413).

Motions on behalf of Singleton for a directed verdict of acquittal made at the close of the Government's case (T 389), and renewed after the defense had rested (T 435), on the ground that the Government had failed to establish Singleton's guilt beyond a reasonable doubt and on the ground that the Government had tried to misuse the Stipulation to supply an essential element of the alleged crime that the checks were stolen (T 390) and that there was a fatal flaw in the proof (T 459-460) were denied.

It should be noted that at the very outset of his summation at page 507 of the Transcript, Mr. Appleby, waiving the Stipulation in front of the jury, stated as follows:

> "Is there any doubt in your mind that these checks were stolen? I ask you to look at the Stipulation when you get into the Jury Room. The Stipulation says that the checks were sent in the ordinary course of the mail and they were never received and no one authorized them to be received. These checks were stolen. There is no doubt about that. The question is, did these defendants possess those checks and did they possess those checks knowingly..." (T 507).

The prosecutor's conduct will be discussed in more detail in Point II of this brief.

The Trial Judge charged the Jury on alternate theories of guilt, instructing them that one or more of the defendants could be found guilty as a principal or as an aider and abetter (T 532-535). The District Judge also instructed the Jurors that in considering guilt as a principal, they should consider actual, as well as constructive possession. (The complete charge to the jury is annexed as Exhibit "C" to appellant Elmore's separate appendix). (T 539-541). Judge Bartels further charged that, should the Jurors find at least one of the defendants guilty as a principal, they might also consider whether the other defendants aided and abetted the principal in possession of the checks. (T 541-544).

After deliberating about three hours without reaching a verdict the Jury returned with a question: One; "Is there a difference between possession (constructive); Two; or aiding and abetting?" (T 565). The District Judge answered:

> "That is a very intelligent question and the answer is that in the verdict it would make no difference which path is taken or not taken between constructive possession or aiding and abetting. It makes no difference. Do I make myself clear?"
>
> "It is a very intelligent question but it makes no difference which path is taken, either or both or neither." (Emphasis supplied).

Twenty minutes after this instruction was given, the Jury returned with a verdict of guilty as to all three defendants (T 567).

Since December 1974 the nineteen-year old GARY SINGLETON had been a resident of the Adolescent Drug Treatment Program at Triboro Hospital, Queens Hospital Center in Jamaica. Each time he appeared in Court before Judge Bartels, he was accompanied by a Therapeutic Counselor from this well-known and well-reputed treatment center, which is a seven-day-a-week twenty-four hour-a-day treatment facility, to which Gary had turned with the assistance of counsel for help in his physical problems. The District Judge was made aware of this on March 14, 1975, the original date scheduled for sentence of appellant Singleton (AS 3-8)*.

Unsolicited communications were directed to the Sentencing Judge by the Queens Hospital Center and various community members, and copies were also sent to the Probation Department and copies thereof are annexed hereto. A letter to Judge Bartels from Dr. Donald A. Moses, Consulting Psychiatrist of the ADTP described appellant Singleton's "serious psycho-pathology with strong infantile characteristics" and opines that the Queens Hospital Center Treatment Facility may help Gary"to overcome his infantilism and to assume his appropriate role in society."

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*Citations to AS and S refer to the Minutes of the adjourned sentence date March 14, 1975 and the Sentence Minutes of May 29, 1975.

However, on March 14, 1975 the District Judge committed appellant Singleton to the custody of the Attorney-General for an examination pursuant to the provisions of the Narcotic Addicts Rehabilitation Act of 1966, Section 4252 of Title 18 of the United States Code and ordered sentence postponed until the Attorney-General made his report to the Court as the result of such examination and his recommendation, stating at that time if the appellant turned out not to be a drug addict, the Court would then consider the Youth Corrections Act or "some other treatment" (AS 7).

On the adjourned sentence date of May 29, 1975 the District Judge again apparently made appellant Singleton's eligibility for Youth Corrections Act Treatment contingent upon his not being a drug addict, and predicated upon the report of the U. S. Department of Justice, Bureau of Prisons, that the appellant was an addict, committed Singleton to the custody of the Attorney-General for treatment under Title 2 of the Narcotic Addicts Rehabilitation Act of 1966 for a period not in excess of four years, the Court stating that it had considered sentencing him under the Youth Corrections Act but "in view of your addiction it believes the present sentence is preferable". Thus the sentencing Judge was of the apparent misapprehension that drug addiction treatment was unavailable under the Youth

Corrections Act, Title 18 U.S.C. Section 5011 (S 3-11).

It may be noted that while the appellant Kirby received the same treatment, the appellant Elmore did receive the benefits of the Youth Corrections Act and may ultimately not be saddled with a criminal record in the future. (Title 18 U.S.C. Section 5021).

POINT I

THE GOVERNMENT FAILED TO PROVE A VIOLATION OF TITLE 18 SECTION 1708 and 2 BEYOND A REASONABLE DOUBT, AND THE "STIPULATION" DID NOT CURE SUCH FAILURE TO PROVE IT.

Pursuant to Rule 28(i) of the Federal Rules of Appellate Procedure, appellant GARY SINCLETON joins in the argument made by his co-appellants in this Court insofar as they are applicable to him and not inconsistent with the points raised herein, particularly with respect to Point I and II of appellant Elmore's brief, even though their respected positions may not be exactly the same.

Furthermore, appellant Singleton points out that the Stipulation apparently so heavily relied upon by the Government to provide the missing essential element of the proof that the checks were stolen and that the defendant had guilty knowledge thereof, upon close perusal proves nothing at all. For whether the addressees of the checks in question received the mail or not, could not be used as evidence that any of the defendants stole the mail or knew that it was stolen. To put it another way, whether the addressees received the mail or not could not prove or disprove that the mail was stolen, i.e. it was not material on the issue of such theft, and for the prosecutor to attempt to use the Stipulation in an effort to provide the missing essential element as proof of same, was erroneous and

wrongful and if he so intended, constituted a misuse of the Stipulation (T 172-174; T 387-388; T 507).

The Government's proof failed to establish that any stolen checks were in the actual possession of appellant Singleton at any time with knowledge that they were stolen, or that Singleton had constructive possession of any stolen checks with knowledge that they were stolen. GARY SINGLETON was never seen outside the Ford Falcon at the scene of the alleged theft at the approximate time the mail was allegedly stolen and there was no proof of his participation in any theft. Furthermore, his mere presence even when coupled with the knowledge that a crime was being committed, would not have been enough to support a finding as an aider and abetter. On the other hand, any "adverse possession" in an effort to get rid of something left in his car, without proof of scienter was not the type of "unlawful possession" the Statute contemplates or the Government proved - unless the "Stipulation" was perverted or misused. Accordingly the Indictment must be dismissed against him for failure to prove beyond a reasonable doubt the essential elements of the crime involved. U. S. v. Kearse, 444 F. 2d 62 (2d Cir. 1971); United States v. Garguilo, 310 F. 2d 249 (2d Cir. 1962); United States v. Infanti, 474 F. 2d 522 (2d Cir. 1973). Singleton's conduct in attempting to get away from the scene of Kirby's and Elmore's arrest was

subject to varying interpretations consonant with innocence. In that regard Inspector O'Neill's admission that his unmarked Government vehicle could be any vehicle cutting off GARY SINGLETON and almost causing an accident, is worthy of note. (T 371). Here again GARY SINGLETON'S "infantilism" and enormous physical difficulties and emotional problems must be taken into consideration.

There was not only insufficient evidence to support a jury finding that appellant Singleton was in actual or constructive possession of stolen mail knowing the same to have been stolen, but also of his knowing participation in any theft of mail or in any unlawful possession of stolen mail with knowledge that the same had been stolen as required on the aiding and abetting theory. United States v. Johnson, 513 F. 2d 823 (2d Cir. 1975); United States v. Febre, 425 F. 2d 107 (2d Cir. 1970), and all the arguments used by the appellant Elmore in an effort to try and shift all blame to the appellant Singleton must backfire, in view of the facts that the mail in question was rolled-up in Elmore's jacket in which Elmore's wallet was also found and Elmore's false denials of ownership of the jacket reflecting a consciousness of guilt. United States v. Heitner, 149 F. 2d 105 (2d Cir. 1945); United States v. Ayala, 307 F. 2d 574 (2d Cir. 1962). There is also the fact that Elmore was the only one seen outside the vehicle at the scene of the alleged theft

and with the opportunity of actually committing any such theft. United States v. Jones, 308 F. 2d 26 (2d Cir. en banc 1962).

POINT II

THE PROSECUTOR TRIED TO MISUSE THE STIPULATION AND PREVENTED DEFENSE COUNSEL FROM PROPERLY PREPARING FOR TRIAL BY MEANINGFUL DISCLOSURE AS PROVIDED BY THE RULES.

It is apparent that the Stipulation was exacted from defense counsel by young prosecutor Appleby for one avowed purpose, and that he immediately attempted to misuse that Stipulation for quite another purpose, which was never within the contemplation of counsel when they signed it. At the outset, we call the attention of the reviewing Court to the prosecutor's surprising statement during his Opening at page 85 of the Transcript, "That the evidence will prove beyond any doubt that these defendants also stole the checks." This statement seemed incongruous and surprising in view of Mr. Sheerin's inability for five months to obtain an Indictment of these defendants for the actual theft, unless Mr. Appleby thought that the Stipulation he procured after inheriting the case, put a different complexion on the case. On several occasions during the trial the prosecutor attempted to use that Stipulation as proving the theft and obviating the necessity of proving same beyond a reasonable doubt, at times urging the Court to tell or charge the Jury that the Government did rely on

the Stipulation to prove that the checks were stolen. Thus, at page 387 of the Trial Transcript, before reading the Stipulation to the Jury, Mr. Appleby requests that the Court instruct the Jury as to the "legal significance" of the Stipulation, which the Court complies with. ("It is just as good as evidence. They understand that.").

On page 507, waving the Stipulation high over his head in front of the Jury at the beginning of his summation, we have already quoted Mr. Appleby's shocking remark which bears repetition here:

> "Is there any doubt in your mind that these checks were stolen? I ask you to look at this Stipulation when you get into the Jury Room. The Stipulation says that the checks were sent in the ordinary course of the mail and they were never received and no one authorized them to be received. These checks were stolen. There is no doubt about that. The question is, did these defendants possess those checks and did they possess those checks knowingly..."

At page 558 of the Transcript after the Court has delivered its charge, we hear Mr. Appleby now insisting that "The Government does rely upon the Stipulation to prove that the checks were stolen", and the Court replies, "I said that". Mr. Appleby: "I don't believe you mentioned the Stipulation." The Court: "I don't have to say they must rely on the Stipulation. I merely have to say "You consider the Stipulation and everything else

entered in evidence". Yet whenever Singleton's counsel objects to this misuse of the Stipulation the Court ridicules him.(T559; T 389-399).

The subject is treated in the Lawyer's Code of Professional Responsibility under DR7-106 (Trial Conduct) and it of course also governs Government attorneys and Assistant U. S. Attorneys like any other lawyer. Subdivision C (4, 5 & 6) of DR7-106 would appear to be involved, as well as Ethical Considerations EC7-13, EC7-24, EC7-25. EC7-13 mandates that the responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. See also American Bar Association Canon 5 and Berger v. United States, 295 U.S. 78 (1935); ABA Opinion 150 (1936). This special duty exists because (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of Governmental powers...(3) in our system of criminal justice the accused is to given the benefit of all reasonable doubts. EC7-25 indicates that a lawyer should not by subterfuge put before a jury matters which it cannot properly consider. EC7-24 and DR7-106 (C) (4) frown upon a prosecutor asserting his personal opinion as to the guilt or innocence of an accused and Subdivision (5) and (6) would seem to cover the misuse of a Stipulation entered into with defense counsel and any other agreement for that matter,

without giving timely notice to the opposing counsel. See also ABA Canon 25.

In United States v. William White, 486 F. 2d 204 (2d Cir. 1973) the Chief Judge stated that when an Assistant U. S. Attorney appears in Court, and especially in a trial before a jury, he represents and personifies the Government and he must prosecute cases diligently and vigorously but he must also perform his task with dignity and self-discipline. See also United States v. Santana, 485 F. 2d 365 (2d Cir. 1973); United States v. Drummond, 481 F. 2d 62 (2d. Cir. 1973); United States v. Fernandez, 480 F. 2d 726 (2d Cir. 1973); United States v. Miller, 478 F. 2d 1315 (2d Cir. 1973).

Many Courts and forward looking Judges have expressed the modernistic judicial attitude that a criminal case is not a sporting event or a minuet, and in Levin v. Katzenbach, 363 F. 2d 287, the Court stated:

> "A criminal trial is not a game of wits between opposing counsel, the cleverer party, or the one with the greater resources to be the 'winner'."

It has also been said that this policy has been in effect in the Federal System for years, particularly under the Jencks Act (18 U.S.C. 3500). The Federal Courts have for years advocated that Pre-Trial Discovery should be approached with a spirit of cooperation among court and counsel in order to prevent those "burdensome trial recesses and also to protect the

Government against post-conviction claims of prejudicial surprise". United States v. Percevault, 490 F. 2d 126 (2d Cir. 1974) and 61 F.R.D. 338. See Malz, Edward, "Reciprocal Disclosure in the Criminal Case", Brooklyn Bar Association Barrister, October 1974, pp. 10-13; and Malz, Edward, "Reciprocal Disclosure in Criminal Cases", Brooklyn Law School Alumni Association Journal Veritas, Volume 6, No. 3 Spring-Summer 1975, pp. 5-12. The American Bar Association's StandardsRelating to Discovery Procedure before Trial, along with the doctrine of fairness enunciated by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963), without a doubt call for liberal availability of pre-trial discovery and materials and reciprocity by both prosecutor and defense counsel.

The appellant GARY SINGLETON was sorely hampered in the preparation of his defense by improper "denials" of his informal motion as directed by the Court, for particulars and discovery, and of course on the day of trial by the summary dismissal of his motion to dismiss and Omnibus Motion. Each and every item sought in these motions and requests for a Bill of Particulars and Discovery and Inspection was supported by common sense and logic and authority to enable defense counsel to prepare a defense and to avoid surprise at the trial. The formal motions to inspect the Grand Jury Minutes and in the alternative upon such inspection for an Order dismissing the Indictment, was

brushed aside with an indication that "we don't do these things in the Federal Court". Surely it was not unreasonable for the defendants to want to know whether the Grand Jury had before it substantial or persuasive evidence upon which to base its Indictment, since to hold a person to answer to an empty indictment for a Federal Crime robs the Fifth Amendment of much of its protective value to the private citizen. (Concurring opinion of Mr. Justice Burton in Costello v. United States, 350 U.S. 359, 364-365; Holt v. United States, 218 U.S. 245). More frank responses to counsel's informal and formal motions for discovery and particulars and motions to suppress statements and physical evidence, might have obviated some of the very burdensome trial delay complained of by the Trial Judge, and might have also protected the Government against this same claim of prejudicial surprise being made by this appellant and his counsel. (T 298-299; T 301-306; T 396-397; T 428-430). It might have revealed the Bruton problem which presented itself when Elmore failed to take the stand, to subject himself to cross-examination by Singleton's counsel, while his own counsel Mr. Kelly rather cleverly tried to shift the blame upon Singleton by using the Government witness Inspector O'Neill in lieu thereof for such incriminating purposes (T 431-434). Proper Suppression Hearings and Disclosure might have enabled Singleton's counsel

to recognize this problem earlier in order to move for a severance. Bruton v. United States, 391 U.S. 123 (1968). In this leading case on severances the Court held that in spite of instructions to the contrary by the Trial Judge, the admission of a defendant's confession or inculpatory statement by a Government witness implicating his co-defendant in a joint trial where such defendant does not take the stand violates the co-defendant's rights of cross-examination secured by the confrontation clause of the Sixth Amendment. The Court also failed to give reasons for denying the defendant's Wade Hearing. The better practice appears to be that the Court should make findings of fact and conclusions of law. United States v. Helmforth, 493 F. 2d 970 (Cir. Ct. of App. Calif); United States v. Sicilia, 457 F. 2d 787 (T76). It is for all of the above reasons that the appellant Singleton did not receive a fair trial.

POINT III

THE TRIAL COURT UNDULY INTERFERED WITH THE TRIAL AND DEPRIVED APPELLANT OF A FAIR AND IMPARTIAL TRIAL, AND THE COURT'S TREATMENT OF DEFENSE COUNSEL DEPRIVED APPELLANT OF THE EFFECTIVE USE OF COUNSEL.

THE COURT COMMITTED PLAIN AND REVERSIBLE ERROR IN INFORMING THE JURY THAT THERE WAS NO DIFFERENCE BETWEEN A FINDING OF GUILT ON THE CONSTRUCTIVE POSSESSION THEORY AND THE THEORY OF AIDER AND ABETTER, AND CERTAIN PORTIONS OF THE CHARGE BY THE TRIAL JUDGE SERVED TO CONFUSE THE JURY AND RENDERED ITS VERDICT EQUIVOCAL.

In United States v. Weiss, 491 F. 2d 460, 468 (2d Cir. 1974), this Court said:

> "For these reasons it is essential at least where appellant's brief as here raises a substantial issue as to the trial, to make a 'close scrutiny of each tile in the mosaic'...Which means reading the entire trial transcript, in this case 1280 pages. This we have done."

We will attempt to demonstrate with illustrations from nearly half the Transcript pages in this case that this Court should also read the entire trial Transcript of 591 pages in this case, and ask this Court to do so, at the same time also therefore asking this Court pursuant to Rule 30(f) of the Appellate Rules to dispense with the reproduction of what might be an impractical and unwieldy appendix.

At the outset, we note that Judge Bartels may have been motivated somewhat in acting the way he did by a desire to help young prosecutor Appleby during his first Federal jury trial in what the Judge considered a "simple case". An experienced older Assistant U. S. Attorney named Caden and Inspector O'Neill were permitted to remain with young Appleby throughout the entire trial to further assist him. What the Judge did not probably know at that point was that it was also the first full-blown Federal jury trial for counsel to the appellant Singleton.

The trial started rather badly, with confusion created from the beginning of the Simmons Hearing, and the Trial Judge asking numerous if not most of the questions on the following pages of the the transcript: T 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 34, 35, 41, 45, 47 ("No, you are not doing it right", (Mr. Appleby)), 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 61, 62, 63 ("We must proceed, I wouldn't want to make this a whole week's case"), 64, 65, 66, 67, 70 ("What is going on here is simply taking time asking the same questions. I'm not going to do that Mr. Malz. You better be aware of that, because I'm not going to permit wasting of time..."),71 ("I don't think he's making the loop just for pleasure"), 75 (Two more questions), 76 (Judge gives no reason for denial of motion to suppress, and makes no findings of fact or conclusions of law - "Call up the Jury"), 77 (3500 Material handed over - "Let's take no more time").

The trial: T 100, 101, 102, 103, 104 (Trial Judge helps prosecutor bring out letter carrier Attmore's direct testimony); pages T 110-111 (Trial Judge helps him with defendant's in-Court identification), 112, 113, 117 (Trial Judge seems to ridicule defense counsel on Ford Falcon), 118, 121, 122, 123, 124, 129, 131 (The Court ask the letter carrier "Was that all the mail you had? Everything you had in there was missing?"), 132 (The Court: "But 500 pieces of mail were missing?"), 136, 139-140

(Sidebar - "The reporter is right here. You made the objection. You can have an exception too, if you like"), 141, 142 (Judge helps prosecutor with photospread in front of jury), 144, 145, 146 (Trial Judge again emphasizes earlier in-Court identification of defendants), 147 (Trial Judge almost overlooks cross-examination in rush), 150, 155, 156 (Trial Judge gently chides Mr. Appleby).

Second day of trial: T 168 ("Supervising" Assistant U. S. Attorney Caden makes a suggestion to the Court and to Mr. Appleby before the Jury is brought up, so that no mis-trial can be declared); T 173-174 (Trial Judge ridicules and castigates Singleton's counsel on the Stipulation objection and accuses him of wasting time); T 178, 182 ("I don't think we are getting anywhere, Mr. Blum"), 183 ("What is your purpose?"), 184-185 (Sidebar - "Ask him whether he ever said this, that's all...he strikes me frankly as a man who is trying to tell the truth..."), T 186-187 ("May I help you a little, Mr. Blum?"), T 189 ("That is not the way to handle it"), T 190, 191, 192 (Numerous interruptions by the Court of cross-examination); page T 207 (The Court: "That is the man you have picked out with the wild Afro?"), T 209 (The Court: "That is immaterial and irrelevant and has nothing to do with the cross-examination and so you do not have to answer that question." -- without any objection having been made by the prosecutor).

Page T 213 ("Please do not repeat the grounds that have been covered"), 217 ("He is not embellishing"), 222 (Oh my, that's what I hoped we wouldn't have to go over again"), 241 ("Let him answer. Ask the question and let him answer. Before he has opened his mouth you are protesting."), 242 (All right now, are you nearly finished?" Mr. Malz:"No, your Honor." The Court: "You may be mistaken about that...You can look at the clock but I say here and now go ahead."), 243 (Court seemingly ridicules defense counsel in front of the jury), 244-246 (Court "helps" defense counsel out), 247 (The Court: "Who intimidated you? Do not let anyone intimidate you."), 250 (Mr. Malz:"I cannot help it if there are three defendants."); 251 (Mr. Malz: "If your Honor will bear with me I will try to correct it." The Court: "I will and I am glad you used the word "bear" -- laughter in Courtroom). T 254 (half-page question by the Court during cross-examination), 255 (the Court lectures appellant's counsel, seemingly condescending and patronizing. "Do you want to talk to your confreres?"); 256-257 (Court practically forcing defense counsel to conference in the hall while the jury is waiting), T 257 (The Court:"You had better get that straight"), 267 (After Mr. Kelly has asked a few questions, the Court: "Mr. Kelly, I hate to interrupt you, but it is 12:30 and I do have the other matter. You can resume after lunch, if you don't mind...").

Renzulli direct testimony: T 287 (Two pages of Court questions), 290, 291, 292, 293, 294, 295 (Judge helps prosecutor), 298-299 (Judge Bartels "reluctantly" grants sidebar on motions to suppress statements and possible Bruton problem), 302 (The Court: "Is that the jacket that came flying out..."), 303 (Damaging questions asked by Trial Judge about Singleton), 305 (Damaging questions by Court on date of postmark on envelopes).

Pages T 307-311 (Trial Judge helps young prosecutor introduce the checks into evidence and shows him how to do it), 313 (entire page of Court questions of Inspector Renzulli on direct), 318-319 (Court finally becomes aware of possible Bruton problem), 327 (The Court: "It's like: When did you start beating your wife?"), 337, 340 (Government hearsay questions permitted by the Court), 343, 344, 345 (very damaging Court questions about GARY SINGLETON "taking off at high speed, jacket flying out", in-Court identification of the appellant. The Court: "That is above the speed limit there"."He must have been going equally as fast"."fish-tailed..." "He did not get out right away?").

Page T 346 (Government Exhibit No. 14 Warning Waiver of Rights Form) - Mr. Malz: "Would your Honor look at it?" The Court: "Overruled." Mr. Malz: "Would your Honor look at it?" The Court: "All right. This is what you read to him?"); T 347 (The Court: "It is not signed by anyone." - but marked in evidence nevertheless).

Pages T 350-351 (Checks in evidence over defense objection), 350-355 (Court questions on Elmore's cap), 358-360 (Court takes over Inspector O'Neill's cross-examination from Mr. Malz), 373-375 (Three pages of Court's questions during O'Neill's cross-examination, Court apparently not satisfied with O'Neill's answers that Singleton stopped at the curb by himself), 375 (Mr. Malz: "Now, where are we now-- The Court: "That is a good question" (laughter in Courtroom), 377 (Court ridiculing Mr. Malz's cross-examination again about "flashing light"), 381 (Court interferes with possibility of developing any kind of meaningful defense on cross-examination regarding speed, crowded streets, noise, improbabilities or impossibilities, opportunities by others to have committed theft, appellant's fright, etc.), 383 (The Court to Inspector O'Neill: "...I thought you said you passed through some red lights"), 384 (Court sustains defense question about appellant's possibly having been frightened, without any Government objection having been made. "Now, we have got to put an end to this Mr. Malz... five more minutes").

T 387 (Stipulation offered by Mr. Appleby and read into the record in front of the jury after requested instruction by the Court!"A Stipulation is an agreement. It is just as good as evidence. They understand that."), 388 (Court refuses sidebar

on Stipulation); pages T 389-397 (Court castigates Mr. Malz--"End to my patience, completely frivolous, unreasonable"; "No cautionary instruction" to be given; the Stipulation "speaks for itself"; "I am not going to waste time on this kind of a thing now"; "Next motion...this is about as simple a case as you can get and I can't see why you are wasting the time of the Court with this type of what I call nit-picking and sophistry"). Finally to Mr. Appleby on page T 397, the Court: "I don't think the answer was as frank as it could be.",(speaking of disclosure of what property seized); still T 397, ("Don't take my time this way, Mr. Malz, don't do it"); 398 (The Court to Mr. Blum: "I don't blame you for being confused. I think everyone is confused by your discussion, Mr. Malz. I just can't understand it." Mr. Blum: "I didn't mean it against him." The Court: I definitely meant it.").

Page T 422 (Cross-examination by the Court of co-defendant Kirby), 429-430 (The Court now acknowledges "oral" motion for statements by the other defendants and excludes statements by Kirby possibly inculpating defendant Singleton), 431 (Mr. Kelly using Government witness Inspector O'Neill to inculpate appellant Singleton without putting defendant-appellant Elmore on the stand, so that defendant Singleton cannot cross-examine Elmore (Bruton v. United States, supra). Mr. Malz objects and is overruled by the Court, T 434. Finally page T 559 (The Court: "I am sorry about the Stipulation but I don't think it is anything you need bother

about"). We respectfully disagreed then and do so again now.

We also again call attention to the Statement of Facts "regarding the Omnibus Motions and argument of January 13, 1973 and summary denial of appellant's motions, the Minutes of which seem to have disappeared from the record and could not be found.

We do not wish to prolong this brief unduly, and believe that we have demonstrated with ample examples the unusual interference by the trial judge during the trial and other proceedings, and some of the bias evidenced toward appellant Singleton's counsel, some of which appears to have rubbed-off so to speak on the youthful appellant GARY SINGLETON. For what the trial Judge does to counsel is in the long run inconsequential, since a good lawyer should be able to accept any abuse heaped on him and go on to the next case, and chalk it up to experience, but when this also deprives the defendant of a fair trial and seems to militate against the client's constitutional and other rights, the lawyer's duty is clear that his client's rights are paramount and his first concern. Thus, if we compare the Trial Judge's deferential treatment of counsel for Elmore and the ultimate preferential Y.C.A. Treatment accorded to appellant Elmore, and the denial of similar Y.C.A. Treatment to young Gary because of the stated ground and reason that he is or was an addict, it becomes important to examine whether there is a possible connection between the two.

(The Y.C.A.-N.A.R.A. question will be discussed in more detail in Point IV of this brief). We are tempted to say at this point that there appeared absolutely no reason in the world why appellant Singleton could not have been treated under the Youth Corrections Act as compared to the other defendants, he having been the only one steadily employed at any time, as a bill collector for the Stembridge Iron Works, and the only one who had voluntarily committed himself into the Queens Hospital Center long before trial for rehabilitation. We respectfully submit that he was in all respects eligible for Y.C.A. Treatment and the mere fact that he was an addict did not and could not have been used as a pretext for denying him Y.C.A. Treatment, unless there was some connection with his lawyer's unfortunate treatment at the hands of the Court. In any event, the client seemed to think so and said so to counsel.

With another illustration, may we point to pages 9-11 of the Sentence Minutes of May 29, 1975 after "the Court has considered sentencing (Singleton) under the Youth Corrections Act, but in view of your addiction it believes the present sentence is preferable..." Upon counsel's attempting to call the Court's attention to the Kaylor Case, the Court seemingly livid with rage and nearly out of control, refuses to listen to any further explanation. The entire trial Transcript and Sentence Minutes raise some serious doubts as to the Court's impartiality and judicial

detachment, and show that the judge's participation during the trial in the form of interrogating witnesses, addressing counsel, and all the other documented conduct reached a point at which it appeared clear to the jury that the appellant was guilty, and deprived him of the effective use of counsel in front of the jury. United States v. Curcio, 279 F. 2d 681 (2d Cir. 1970), and United States v. Nazzaro, 472 F. 2d 302 (2d Cir. 1973), where this Court stated:

> "We are mindful of the fact that trials in the District Courts are not conducted under the cool and calm conditions of a quite sanctuary of an Ivory Tower and that enormous pressures are placed on District Judges by an ever-increasing criminal docket and demands for speedy trials of criminal defendants...but grave errors which result in serious prejudice to a defendant, cannot be ignored simply because they grow out of difficult conditions" (at p. 304).

In Bollenbock v. United States, 326 U.S. 607, Mr. Justice Frankfurter stated:

> "In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the Judge's belief in the guilt of the accused for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be."

In United States v. Rappy, 157 F. 2d 964 (2d Cir. 1946), Mr. Justice Learned Hand said:

> "The Circuit Court of Appeals may intervene, though defendant has made no objections to a charge, if it appears that justice has

gravely miscarried because of the giving of the charge."

This brings us to the unfortunate and perhaps inadvertent, but plain and reversible error which occurred when the Court practically directed a jury verdict of guilty by informing the jury that there was no difference between "constructive possession" and "aiding and abetting" (T 565). Since the appellants were entitled to have their guilt found by the jury directly and specifically and not by way of possible inference, speculation, or conjecture, and since we have no way of really knowing on what basis they found the appellant guilty, the verdict of the jury was equivocal and cannot stand.

We believe that we have amply demonstrated that a "close scrutiny of each tile in the mosaic" of this trial will cause the reviewing Court to determine that all the instances of interferences by the Court and other behavior or bias, when considered individually, or taken together as a whole, may have reached that point where this Court of Appeals can make a safe judgment that appellant Gary Singleton was deprived of a fair trial. United States v. Nazzaro, supra; United States v. Dellinger, 472 F. 2d 340 (1972); United States v. Fernandez, 480 F. 2d 726 (1973); United States v. Brandt, 196 F. 2d 653 (1952); United States v. Guglemini, 384 F. 2d 602 (2d Cir. 1967); United States v. Boatner, 478 F. 2d 737 (1973), and many other cases.

POINT IV

THE SENTENCING COURT DENIED APPELLANT SINGLETON

YOUTH CORRECTIONS ACT TREATMENT UNDER THE MISAPPREHENSION THAT NARCOTIC ADDICTS REHABILITATION ACT TREATMENT DISQUALIFIED APPELLANT FROM Y.C.A. ELIGIBILITY AND TREATMENT, AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AND EQUAL PROTECTION.

In Dorszynski v. United States, 418 U.S. 424 (1974), the Supreme Court of the United States resolved a conflict among the Circuit Courts by holding that in sentencing a youth offender as an adult under other applicable Penal Statutes, Section 5010(d) of the Federal Youth Corrections Act requires a Federal District Court to "find" that the offender would not benefit from treatment under the Act, but does not require that such "finding" be accompanied by supporting reasons. Some Circuits had taken that position, and some Circuits had required an explicit finding accompanied by supporting reasons. For the first position, three Circuits had so held (Williams v. United States, 476 F. 2d 970 (CA3 1973); Cox v. United States, 473 F. 2d 334 (CA4 1973) (en banc); United States v. Jarratt, 471 F. 2d 226 (CA9 1972), and three Circuits had required an explicit finding accompanied by supporting reasons (United States v. Kaylor, 491 F. 2d 1133 (2d Cir. en banc 1974); Brooks v. United States, 497 F. 2d 1059 (CA6 1974); United States v. Coefield, 155 U.S. App. D.C. 205, 476 F. 2d 1152 (1973) (en banc).

In Robinson v. California, 370 U.S. 660, Watson v. United States, 408 F. 2d 1290 (1969), Powell v. Texas, 392 U.S. 514, and a whole line of other cases, it has been held that punishing

someone because he is an addict constitutes cruel and unusual punishment and is violative of the Eighth and Fourteenth Amendments.

In the case of appellant Gary Singleton, Judge Bartels indicated at the adjourned sentencing and at the actual sentencing, at the pages we have already alluded to, that although the Court was aware of his eligibility and possibility of sentencing under the Youth Corrections Act, in view of the appellant's drug addiction, the present sentence under Title 2 of the Narcotic Addicts Rehabilitation Act of 1966, and pursuant to Section 4253 Title 18 of the United States Code, was "preferable." Accordingly, the Judge determined that Gary was an addict and likely to be rehabilitated through treatment and therefore committed him to the custody of the Attorney General for treatment under Title 2 of the Narcotic Addicts Rehabilitation Act (without a hearing on that question)* for a period not in excess of four years.

It might be urged that since the Judge did not have to give a supporting reason for his finding that the youth offender would not benefit from treatment under the Federal Youth Corrections Act, the fact that he gave what might be construed as a wrong reason is of no consequence. This argument would appear to be untenable, when as here a denial for the wrong reasons violates equal protection and due process and assumes Constitutional di-

*(Cf. New York Mental Hygiene Law provides for a hearing and even a jury trial on the question of drug addiction itself).

mensions. (Robinson v. California, 370 U.S. 660, and all the other cases cited supra.)

Judge Bartels was apparently under the impression that the two acts are mutually exclusive, and that drug addiction was a factor disqualifying a youthful offender from Y.C.A. treatment, or that Y.C.A. would not afford him the very drug treatment the Judge thought he would get under NARA, apparently overlooking Title 18 Section 5011, which plainly provides for all types of treatment (including drug addiction and hospitals) for youthful offenders. It could not have been the intention of Congress to deprive eligible youthful drug addicts of the benefits of Y.C.A. treatment as well as drug treatment thereunder, otherwise youthful offenders might be deemed to be punished twice for being an addict, if otherwise eligible for Y.C.A. treatment, by remaining saddled forever with a felony record. There appears to be no provision under NARA for the expunging of a felony record, which is of course one of the important benefits provided by Congress under the Federal Youth Corrections Act (18 U.S.C. 5021). There would appear to be no rational basis for additionally punishing a youthful offender by saddling him with a criminal record merely because he is an addict. Indeed, his very drug addiction would appear to be punishment enough. The Federal Y.C.A. Statute nowhere says that a youthful drug addict becomes thereby ineligible,

quite the contrary, Title 18 U.S.C. 5011, as we have already stated, provides for all kinds of treatment, including that for drug addiction; neither does NARA seemingly provide not only no expunging of a youth's felony record, but no special treatment per se for youthful offenders or segregation from hardened criminals. A study of the four parts of NARA clearly leads to the conclusion that its purpose was to supplement Y.C.A. not to make these two acts mutually exclusive.

The purpose of the Federal Youth Corrections Act was to provide a new alternative sentencing and treatment procedure for youthful offenders. Senate Report No. 1180, 81st Cong., 1st Session (1949). In sentencing a youthful offender, the Court should face up to the proposition that Congress has intended a clear preference for the objective of rehabilitation both in the legislative history of the Act and the statutory language which it utilized. It appears to be the exceptional case where the sentencing judge determines that special youthful rehabilitation treatment afforded by Y.C.A., particularly for those under 22, would be of no value, and as a practical matter most District Judges in New York apparently still give a reason in those rare instances of denial of Y.C.A. Treatment to apparently eligible youthful offenders.

And to say that a young addict youthful offender is eligible for Y.C.A. treatment, but because he is an addict, treatment under

NARA is preferable, when such drug addiction treatment and more is plainly available under Y.C.A., is clearly erroneous. Coupled with that is the fact that the Court nowhere indicated that young Singleton was not eligible for Y.C.A. treatment for any other reason except that he was an addict.

It is difficult to see what possible benefit NARA could afford to a youthful offender already in one of the finest Adolescent Drug Treatment Centers at the Queens Hospital Center, and what was accomplished by interrupting this 7-day-a-week, 24-hour a day hospital-confined treatment. The Trial Judge and now this reviewing Court in the Exhibits annexed to this brief, had plenty of material available to it indicative of the treatment and progress young Singleton had been making since he voluntarily had committed himself into the Triboro Hospital.

All that was apparently accomplished by denying the appellant the benefits of the Federal Youth Corrections Act because he was an addict, was to saddle him with a felony criminal record for the rest of his life. It is difficult to see how such a result could have been visualized by Congress in providing for the Federal Youth Corrections Act and the type of treatment available thereunder, including treatment for drug addiction, and other treatment in line with modern penology.

Since the Sentencing Court obviously considered the appellant eligible for Y.C.A. Treatment, but was apparently under the misapprehension that because he was an addict he could not get this

treatment under the Youth Corrections Act, the denial of Y.C.A. Treatment was based on erroneous grounds, and Appellate Review is not only warranted but of the essence, and such erroneous "finding" based on erroneous supporting reasons must be set aside.

In conclusion, we note in the last analysis, that there are no "simple" cases where human life and liberty and human dignity are at stake.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THE JUDGMENT OF THE DISTRICT COURT MUST BE REVERSED AND THE INDICTMENT AGAINST APPELLANT GARY SINGLETON DISMISSED, OR IN THE ALTERNATIVE THE CASE SHOULD BE REMANDED WITH DIRECTIONS TO GRANT APPELLANT SINGLETON FEDERAL YOUTH CORRECTIONS ACT TREATMENT WITH ALL THE DRUG AND OTHER MEDICAL TREATMENT AVAILABLE THEREUNDER, OR AT THE VERY LEAST, A NEW TRIAL SHOULD BE ORDERED BEFORE ANOTHER JUDGE AND JURY.

Respectfully submitted,

EDWARD MALZ
Attorney for Appellant
GARY SINGLETON
Office & P.O. Address
16 Court Street
Brooklyn, New York 11241
(212) 875-1940

APPEAL No. 100 74CR 612 74-471 BARTELS, J.

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: SCHEERIN
vs.	
GARY SINGLETON; WILLIAM M. KIRBY (Jail) and WILLIAM ELMORE	CLOSED
	For Defendant: Kirby:
	Court assigned counsel Harry Blum
	130 Clinton St., Bklyn, N
	TR 5-1102
Theft of mail (stolen U.S. Checks)	

ABSTRACT OF COSTS	AMOUNT		DATE	NAME	RECEIVED		DISBURSED	
Fine,			7/2/74	Notice of Appeal (no fee) (Elmore)				
Clerk,								
Marshal,			5/29/75	Notice of appeal (NO FEE) (SINGLETON)				
Attorney,								
Commissioner's Court,			5-30-75	Notice of Appeal (no fee) deft Kirby				
Witnesses,								

DATE	PROCEEDINGS
11-14-74	Before WEINSTEIN J - Indictment filed.
11-21-74	Letter filed dated Nov. 19, 1974 received from Chambers from Edward Malz, Esq. re deft Gary Singleton.
11-22-74	Before BARTELS J - case called - adjd to Nov. 25, 1974 (for pleading)
11-25-74	Before BARTELS J - case called - defts & atty Edward Maltz present - defts enter pleas of not guilty - bail contd.
12/6/74	Notice of readiness for trial filed
1/2/75	Notice of motion for inspection of Grand Jury minutes ret. 1/13/75 (K
1-6-75	Govts affidavit in opposition to motion for inspection of Grand Jury minutes filed.
1/9/75	Notice of motion to dismiss, etc. filed ret. 1/13/75 (SINGLETON)
1/13/75	Before BARTELS, J.- Case called- Defts and counsel present- Hearing on m

"A"

74CR 712

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	to suppress ordered and begun-Defts' motion to suppress denied- Hearing concluded-Trial ordered and begun-Trial contd to 1/14/75 at 10:00 A.M.		
1-14-75	Before BARTELS J - case called - defts present with attys - trial continued - Defts move for dismissal of the indictment - motions denied (all 3 defts) Trial contd to Jan. 15, 1975 at 10:00 am.		
1-15-75	By Bartels J - Order of Sustenance filed. (recvd in Clerks office 2-21-		
1/15/75	Before BARTELS,J.- Case called- Defts and counsel present- Trial resumed Defts move for jirected verdict of acquittal-denied- Marshals sworn-Jury retires to deliberate- Jury returns with a verdict of guilty as to all defts- Jury polled- Trial concluded- Bail contd		
1/24/75	Voucher for expert services filed (court stenographers)		
3/14/75	Before BARTELS,J.- Case called- Deft KIRBY not present- On motion of deft' counsel sentence adjd to 3/21/75 at 9:30 A.M.- Deft ELMORE and counsel pre in lieu of definite sentence deft sentenced pursuant to the provisions of the Y.C.A.- T-18, U.S.C. Sec. 5010(b) until discharged by the Yath Correction Division- deft to surrender on 4/1/75 at 10:00 A.M.- Deft SINGLETON committed for an examination pursuant to the provisions of the Narcotic Addict Rehabilitation Act of 1956, T-18, U.S.C. Sec. 4252, and sentence is postponed until the Atty General makes his report to the Court of the results of such examination and his recommendations		
3/14/75	Judgments and Commitments filed- certified copies to Marshal (SINGLETON an ELMORE)		
3-18-75	Certified copy of Judgment & Commitment retd and filed - deft Singleton delivered to Federal Det. Headquarters.		
3-21-75	Before BARTELS J - case called - deft Kirby & counsel present - deft is sentenced for examination pursuant to the provisions of the Narcotic Addict Rehabilitation Act of 1966, T-18, U.S.C.Sec. 4252 and sentence is ordered postponed until the Atty.General makes his report to the Court of such examination and his recommendations.		
3-21-75	Judgment & Commitment filed - certified copies to Marshal (KIRBY)		
3-21-75	Notice of Appeal filed (ELMORE) without fee.		
3-21-75	Docket entries and duplicate of Notice of Appeal mailed to Court of Appeals (ELMORE)		
3-25-75	Certified copy of Judgment & Commitment retd and filed - deft. deliver to Fed.Detention Headquarters. (KIRBY)		
3/31/75	Stenographers Transcript dated 1/13/75 and 1/14/75 filed		
4/2/75	Certified copy of Judgment and Commitment retd and filed- deft delivered t Federal Detention Headquarters(ELMORE)		
4-3-75	Certified copy of Judgment & Commitment retd and filed - deft Singleton delivered to F.C.I. Milan,Michigan		

GSA DC 72-14455

74 CR--712

CRIMINAL DOCKET

DATE	PROCEEDINGS
4-16-75	Record on Appeal certified and handed to Joan Gill, for delivery to the Court of Appeals (ELMORE)
4/16/75	Stenographers Transcript dated 1/15/75 filed
4/21/75	Acknowledgment received from the court of appeals for receipt of re
4/29/75	Stenographers Transcripts dated 11/22/74, 11/25/74 and March 14, 19 filed
4-30-75	Record on Appeal certified as to deft ELMORE & handed to J.Gill for delivery to the Court of Appeals (receipt in filed)
5-5-75	Acknowledgment received from Court of Appeals filed for receipt of Record on Appeal (Elmore)
5-19-75	Voucher for Expert Services filed (Elmore)
5/23/75	Before BARTELS,J.- Case called- Deft KIRBY and counsel present-On conviction of guilty deft committed for treatment under Title II o the NARA of 1966 for a period of 4 years pursuant to T-18, U.S.C.
5/23/75	Judgment and Commitment filed- certified copies to Marshal
5/29/75	Before BARTELS,J.- Case called deft sentenced for treatment under II of the N.A.R.A. of 1966, T-18, U.S.C.Sec. 4253, for a period of years- Clerk to file notice of appeal (SINGLETON)
5/29/75	Judgment and Commitment filed- certified copies to Marshal(SINGLET
5/29/75	Notice of appeal filed(SINGLETON)
5/29/75	Docket entries and duplicate of notice of appeal mailed to court o appeals (Singleton)
5-30-75	Notice of Appeal filed (no fee-deft Kirby)
5-30-75	Docket entries and duplicate of Notice mailed to C of A (Kirby)
5/30/75	Certified copy of Judgment and Commitment retd andfiled- deft deliv to Federal Detention Headquarters(KIRBY)
6/3/75	Certified copy of Judgment and Commitment retd and filed- deft del to Federal Detention Headquarters(SINGLETON)

D. C. 109

F.#743,433

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

-against- :

GARY SINGLETON, WILLIAM M. KIRBY and WILLIAM ELMORE, :

Defendants. :

- X

Bartels.

SUPERSEDING INDICTMENT

Cr. No. 74 CR 712
(T.18, U.S.C., §1708 and §2)

THE GRAND JURY CHARGES:

On or about the 17th day of June 1974, within the Eastern District of New York, the defendant GARY SINGLETON, the defendant WILLIAM M. KIRBY and the defendant WILLIAM ELMORE did unlawfully have in their possession the following:

1. American Express Travelers Check No. FB68-475-370 payable to Lawrence Reed.

2. State of New York check No. 42554393 payable to Samuels E L&E H 130 46-145th Street South Ozone Park, NY 11436.

3. State of New York check No. 98630020 payable to G.M. Conner 133 11-145th Street S. Ozone Pk., N.Y. 11436.

4. State of New York check No. 42578747 payable to Lewis-S&E 126 22-145th Street South Ozone Park, N.Y. 11436.

which were the contents of letters stolen from the United States Mail, the defendants knowing the same to have been stolen. (Title 18, United States Code, Section 1708 and Section 2.)

A TRUE BILL.

"B"

JB:FJS:mb
.#741,857

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

-against-

GARY SINGLETON,

Defendant.

- - - - - - - - - - - - - - - - -

INDICTMENT

Cr. No. 74 CR 449
(T. 18 U.S C., §1708

THE GRAND JURY CHARGES:

On or about the 17th day of June, 1974, within the Eastern District of New York, the defendant GARY SINGLETON did unlawfully have in his possession the contents of several letters including but not limited to letters addressed to Lewis-S & E, 126-22 145th Street, South Ozone Park, New York 11436 and G. M. Conner, 133-11 145th Street, South Ozone Park, New York which letters were stolen from the United States Mail, the defendant knowing the same to have been stolen.
(Title 18 United States Code, §1708.)

A TRUE BILL.

"C"

FOREMAN

David G. Trager by [illegible]
DAVID G. TRAGER
UNITED STATES ATTORNEY

Mot to dismiss
superseding Ind.

EDWARD MALZ
COUNSELLOR AT LAW

(212) 875-1940

16 COURT STREET
BROOKLYN, NEW YORK 11241

November 29, 1974

Hon. Francis Sheerin
Assistant U. S. Attorney
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: U.S.A. v. Gary Singleton, et al
74 CR 449

Dear Mr. Sheerin:

Pursuant to conference and discussion in Judge Bartels' courtroom on November 25, 1974, kindly furnish the following Discovery and Inspection and Bill of Particulars:

I. Pursuant to Rule 16 of the Federal Rules of Criminal Procedure requiring the Government to permit the defendant to inspect and copy or photograph ~~all relevant~~

(a) All written or recorded statements or confessions made by the defendant.

(b) All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the case.

(c) Reports, memoranda or other internal Government documents made by Government Agents concerning statements and admissions made by the defendants.

(d) Whether any property was seized from the defendants or from an area under their control which the Government intends to offer into evidence against them or which served as a lead to evidence against them.

(e) Any evidence in the possession of the Government which may tend to exonerate the defendant, and any items, records and leads to evidence which are exculpatory or favorable to the defendant, and exculpatory statements.

"D"

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II. Pursuant to Rule 7 (f) of the Federal Rules of Criminal Procedure, the following Bill of Particulars:

(a) The date, approximate time and place of the alleged crimes committed.

(b) The date, approximate time and place of the arrest of the defendant.

(c) Whether the Government had acquired arrest or search warrants in connection with this defendant.

(d) The date, approximate time and place of such alleged acts of the defendant as specified in the Indictment and superseding indictment.

(e) All items, if any, seized from the defendants, whether or not contraband and intended to be introduced by the Government at the trial.

(f) Names and identifications of the arresting officers and other officers vitally involved in the arrest.

(g) If the government intends to introduce identification testimony by a witness who has previously identified the defendant, the type of prior identification, the date and place of any such prior identification.

(h) If the Government's proof embraces documentary proof other than indicated above, please indicate and furnish particulars and/or copies thereof.

(i) The names of all eye witnesses whom the Government intends to produce at the trial.

(j)Copies of any statements made by any co-defendant which may tend to affect the defendant, Gary Singleton.

(k) A true and complete description of any and all contraband, fruits of crimes and instrumentalities seized by lawenforcement authorities from the person or property of defendant, together with a statement of the date, approximate time and place, as well as the person fromwhom such items were seized.

EDWARD MALZ
COUNSELLOR AT LAW
[illegible] COURT STREET
BROOKLYN, NEW YORK 11241

That any and all property and statements illegally taken and seized by the United States be returned to the defendant and be suppressed and that the United States Attorney be restricted from using same upon the trial and any information, directly or indirectly, obtained therefrom, or by means thereby, or, in the alternative, that

(l) A specification of the date, time, place and length of time when defendant was questioned by law enforcement authorities, together with the names and identification of each interrogating officer, regardless of whether or not any statement or admission was obtained.

(m) A statement as to any information which may adversely reflect upon the Government's witnesses, either as to capacity, mental or physical, or as to veracity, including but not limited to, any criminal record of any and all witnesses, the involvement of the witnesses, if any, and the personal use of dangerous drugs, any record and/or evidence of psychiatric treatment or of confinement to a narcotics addiction institution.

(n) A true and complete copy of all photographs taken of the defendant by law enforcement authorities following the subject arrest, including but not limited to so called "mug" shots and line-up photographs, togehter with a statement of the date, time, place and persons depicted in any such photographs.

(o) Any and all additional items, matters or property which may be discovered subsequent hereto, are included in this request.

III. Pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure the following relief is also requested:

That any and all property and statements illegally taken and seized by the United States be returned to the defendant and be suppressed and that the United States Attorney be restricted from using same upon the trial and any information, directly or indirectly, obtained therefrom, or by means thereby, or, in the alternative, that a hearing be held forthwith to determine whether same was unlawfully seized and should be suppressed, and for such

EDWARD MALZ
COUNSELLOR AT LAW

(212) 875-1940

16 COURT STREET
BROOKLYN, NEW YORK 11241

November 29, 1974

other and further relief as to the Court may seem just and proper under the circumstances.

Very truly yours,

Edward Malz

EM/jk

EDWARD MALZ

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

RJD:FJS:ip
F.#741,857

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

December 6, 1974

Edward Maltz, Esq.
16 Court Street
Brooklyn, New York 11201

Re: United States v. Gary Singleton

Dear Mr. Maltz:

In response to your letter dated November 29, 1974, I am furnishing the following answers. I wish to note that these requests are far in excess of the matters discussed by us on November 25, 1974.

I.

A) No statement of Singleton was ever taken.

B) No mental, physical, scientific or experimental tests were taken.

C) See A) as to Singleton - not entitled to statements of co-defendants.

D) Property was seized by the agents.

E) Government is unaware of exculpatory information.

II.

A) Only one crime charged - approximate time 1:20 P.M. June 17, 1974 approximate location 111th Avenue and Sutphin Blvd., Queens.

"E"

B) Approximate location of apprehension of Singleton was 111th Street and 159th Street, Queens approximate time 1:25 P.M. June 17, 1974.

C) No warrants as to Singleton.

D) June 17, 1974 at - 145th Street and 130th Avenue, South Ozone Park, Queens. See also answers to items (A) and (B) of II.

E) Can inspect on 2 days notice.

F) Postal Inspectors:

O'Neil
Cole
Renzulli

(Postal) Special Investigator

Shovlin

G) Photo I.D. - June 25, 1974 - Cadman Plaza.

H) Government has no documentary evidence at this time, but if it does acquire any it will inform you.

I) Names of witnesses not discoverable.

J) Statements of co-defendants not discoverable.

K) On 2 days notice you may inspect items seized.

L) Not discoverable.

M) Not discoverable.

N) Can view these photographs on 2 days notice.

O) Denied.

III.

Motion to suppress should be brought on pursuant to the Federal Rules of Criminal Procedure.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: _____
Francis J. Sheerin
Assistant U.S. Attorney

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

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January 10, 1975

U.S. Court House
225 Cadman Plaza E.
Brooklyn, N.Y.

A.D.T.P.
Triboro Hospital, Ward 3A
82-68 164 Street
Jamaica, Queens 11432

To: Honorable Judge,

This letter is to inform you that Mr Gary Singleton is and has been a resident of the Adolescent Drug Treatment Program since December 26, 1974.

In the Adolescent Drug Treatment Program, we deal with the former addict not as a misfit in society, but a human being with an emotional problem [illegible] four hour, drug-free Therapeutic Community where former addicts are taught to function and cope with their emotional problems. Having learned how to control his emotions, the former addict can eventually lead a useful and productive life within our society.

At the present time, Mr. Gary Singleton is a member of our service crew. He is progressing well and as he progresses further he will attain job functions involving more responsibilities. He is learning how to be responsible not only to himself, but also to others. He is beginning to show and demonstrate signs of emotional maturity. It is my opinion that this program will benefit him very much if he is allowed to continue treatment here.

In view of the above information, we hope you will allow him to continue his approach toward the goal he hopes to achieve in our program.

For any additional information on Mr. Gary Singleton's progress, please feel free to [illegible] address or phone numbers (212) 990-3207-3208.

Sincerely yours,

Kenneth Gaipa
Kenneth Gaipa
Supervisor/Therapeutic Community

KG/rl

"F" ONLY COPY AVAILABLE

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January 22, 1975

Mr. Victor Zacchco
Department of Probation
U.S. Court House
225 Camdan Plaza
Brooklyn, New York

Dear Mr. Zaccheo:

As Probation Officer in the case of Gary Singleton I feel the following information should be taken into consideration:

The Adolescent Drug Treatment Program's Therapeutic Community is a seven-day a week, 24-hour treatment facility. While the residents are in the Community they are not allowed outside unless staff gives them permission. Everything that anyone gets in the Community is based on merit and if, someone was allowed out just to play football he would have to earn the privilege.

The Therapeutic Community is structured in such a way that discipline and concern are used to rebuild the individuals so they can deal with their emotional disorders which have lead them to crime and drugs. I am aware that a person who demonstrates antisocial behavior should not be allowed on the street, but I strongly feel that at this point, it would not be in the best interest of Gary Singleton to go to jail.

I realize the charges against him are serious, but I also know that he has not had a good opportunity to change his way of life. Eventhough in the past he was given a break by being probated, he was never in a facility that has shown in the past that it could help emotionally disturbed individuals to lead a normal, productive life when the treatment was completed.

continued.....

"G"

I sincerely hope that you will give him the opportunity to help himself due to the fact that he has made some progress here. After he has been give a real chance to better himself, and if, for some reason he abuses this last change, I would have no qualms about your decision to do what you feel is just.

Respectfully yours,

Kenneth Gaipa
Supervisor
Therapeutic Community
Adolescent Drug Treatment Program

...cjh

January 31st, 1975
166-3[illegible] 9th Ave.,
Whitestone, N.Y. 11357

Honorable Judge Bartels
Brooklyn Federal Court
Brooklyn, N.Y.

Honorable Judge Bartels:

I am writing in behalf of Gary Singleton who has been convicted in your Courtroom on January 15th for possessing stolen mail. My name is Morris Perr, President of CHIEF "CONCERNED ADULTS FOR DRUG EDUCATION AND PREVENTION". I realize Gary committed a crime and I cannot condone it, but sending him to prison at this time will not serve a useful purpose. Gary is being treated at the A.D.A.P. Therapeutic Community and is coming along nicely. I am sure that Gary must have committed this crime while under the influence of drugs or to get for it. He is a sick boy and needs treatment. He will receive the help he needs in this Drug Program. It appears to be one of the better and successful Programs in town.

Your Honor, you could parole him to the Program and if he doesn't live up to the rules of the parole, you could always revoke his parole and send him away if you see fit. While Gary is being treated at the Therapeutic Community, his parents will be attending group discussions where they meet with other parents who have children in the drug program. The purpose is to try and build a better relationship between the parents and their child. The results have been very good in the past.

Your Honor, I beg you to take these facts into consideration and allow him to continue the treatment he is getting at this Program.

Thanking you for any mercy you may show this boy, I am

Respectfully yours,

Morris Perr, President

"H"

January 31st, 1975
166-[illegible] 9th Ave.,
Whitestone, N.Y. 11357

Mr. Victor Zucchee
Dept. of Probation
U. S. Dist. Court
225 Cadman Plaza
Brooklyn, N.Y.

Dear Mr. Zucchee

I am writing on behalf of Gary Singleton. My name is Morris Perr, and I am President of CADLT (CONCERNED ADULT FOR DRUG EDUCATION AND TREATMENT). I know that Gary was convicted in front of Judge Bartels and is awaiting sentencing. I was told that you are the investigating probation officer. I hope that your recommendation carries a lot weight with Judge Bartels and Gary be placed on probation back in the Drug Program where he will get the treatment he most certainly needs. I am sure he must have committed the crime under the influence of drugs or the need of it. I am not condoning what he did, but I do know that he is a sick boy and needs to be treated. I can assure you that he will get that treatment at the A.D.T.P. [illegible] facility. This is one of the most successful Programs in the country of [illegible]. Sending Gary to prison at this time, [illegible] under treatment, would be an injustice, not only will Gary be treated but his parents will be coming to Group Discussion Classes with other parents who have children in the Program. This will help them to build some kind of communication with their son. He is a young boy and should be given every chance to get himself straightened out. Prison should be the last alternative.

[illegible] will take all the facts into consideration and do everything possible to see to it that Gary goes through this program so he will get the help he needs. I am enclosing my card and if you would like to talk to me, I will [illegible] you at your convenience. Thanking you for your consideration, I am

Sincerely yours,

Morris Perr, President
CADLT

"I"

Legal file

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March 11, 1975

Honorable Judge Bartels

Re: Gary Singleton

Gary is a 20-year-old black, single, male who entered our Therapeutic Community on 12/26/74. Since that time, he has been cooperative with the program to the best of his ability. He has demonstrated some serious psychopathology with strong infantile characteristics. He has difficulty in determining right and wrong in a highly infantile manner.

It is my opinion that a treatment facility may help Gary to overcome his infantilism and to assume his appropriate role in society. He is, however, the type of individual who, if is placed in jail, will begin to emulate a criminal element with whom he will come in contact.

Any further information can be obtained by having a physician contact me at the above address.

Respectfully,

Donald A. Moses, M.D./jsp

Donald A. Moses, M.D.
Consulting Psychiatrist
Adolescent Drug Treatment Program

/jsp

"J"

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March 14, 1975

U.S. Court House
225 Cadmen Plaza E.
Brooklyn, N.Y.

A.D.T.P.
Triboro Hospital, Ward 3A
82-68 164 Street
Jamacia, Queens 11432

To: Honorable Judge,

This letter is to inform you that Mr. Gary Singleton is and has been a resident of the Adolescent Drug Treatment Program since December 26, 1974.

In the Adolescent Drug Treatment Program, we deal with the former addict not as a misfit in society, but as a human being with an emotional problem. We are operating a twenty-four hour, drug-free Therapeutic Community where former addicts are taught to function and cope with their emotional problems. Having learned how to control his emotions, the former addict can eventually lead a useful and productive life within our society.

At the present time, Mr. Gary Singleton is a member of our service crew. He is progressing well and as he progresses further he will attain job functions involving more responsibilities. He is learning how to be responsible not only to himself, but also to others. He is beginning to show and demonstrate signs of emotional maturity. It is my opinion that this program will benefit him very much if he is allowed to continue treatment here.

In view of the above information, we hope you will allow him to continue his approach toward the goal he hopes to achieve in our program.

For any additional information on Mr. Gary Singleton's progress, please feel free to contact me at the above address or phone numbers (212) 990-3207-3208.

Sincerely yours,

Kenneth Gaipa
Supervisor/Therapeutic Community

"K"

file

ADOLESCENT DRUG TREATMENT PROGRAM

March 21,1975

The Honorable Judge Bartels
U.S. Courthouse
225 Cadmen Plaza East
Brooklyn, New York

RE: Gary Singleton

Dear Honorable Judge Bartels:

In presiding over the case of Gary Singleton, I feel the following information should be taken into consideration:

The Adolescent Drug Treatment Program's Therapeutic Community is a seven-day a week 24-hour treatment facility. While the residents are in the community, they are not allowed outside unless staff gives them permission. Everything that anyone gets in the community is based on merit and if someone was allowed out just to play baseball he would have to earn the privilege.

The Therapeutic Community is structured in such a way that discipline and concern are used to rebuild the individuals so that they can deal with their emotional disorders which have led them to crime and drugs. I am aware that a person that demonstrates anti-social behavior should not be allowed on the street, but I strongly feel that, at this point, it would not be in the best interest for Mr. Gary Singleton to go to jail. I realize the charges against him are serious, but I also know that he has never had a good opportunity to change his way of life. In the past he may have been given breaks, but he has never been in a facility in the past that has shown to be a help to emotionally disturbed individuals in able to lead a normal productive life when treatment was completed.

I sincerely hope you give him the opportunity to help

"L"

himself due to the fact that he has made some progress in the short time he was with us. After he is given a real chance to better himself, and if, for some reason he abuses this privilege, I would have no qualms about the court's decision to do what they feel is just.

If you would like any additional information regarding Gary Singleton, please feel free to contact me at the following number: 990-3207/8.

Respectfully yours,

Kenneth Gaipa
Supervisor/ADTP-
Therapeutic Community

ADOLESCENT DRUG TREATMENT PROGRAM-
THERAPEUTIC COMMUNITY

KG:jd

CC: Mr. Edward Malz
16 Court Street
Brooklyn, N.Y.

NY,NY

Mr. Cuthbert L.A. George
Program Director/ADTP

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.
Dated:

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

Check Applicable Box

☐ Individual Verification — being duly sworn, deposes and says: deponent is the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Corporate Verification — the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF KINGS ss.:

Joanne Killeen being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York

Check Applicable Box

☒ Affidavit of Service By Mail — On August 21, 1975 deponent served the within Notice of Motion and Affirmation and Brief of Appellant Singleton upon HON. David G. Trager (US Att); Fed. Legal Aid (Elmore); Harry Blum (Kirby) attorney(s) for Defts-Apps. in this action, at US Att-Fed. Bldg, Bkn, NY, LAS-Foley Square, Blum 130 Clinton St, Bklyn, N.Y. the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ Affidavit of Personal Service — On 19 at deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on August 21, 19 75

Joanne Killeen

.....
The name signed must be printed beneath

Joanne Killeen

EDWARD [illegible]
Notary Public, State of New York
No. 24-2466500 Qualified in Kings County
Commission Expires March 30, 1977